

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20881

In the Matter of	:	
	:	
Kathryn Jane Meredith, d/b/a KM	:	PROPOSED PLAN OF
Advisory Services,	:	DISTRIBUTION
	:	
Respondent.	:	

ADMINISTRATIVE PROCEEDING
File No. 3-20882

In the Matter of	:
	:
John Paul Harnish, d/b/a KM	:
Advisory Services,	:
	:
Respondent.	:

I. OVERVIEW

1. The Division of Enforcement submits this Proposed Plan of Distribution (the “Plan”) to the United States Securities and Exchange Commission (the “Commission”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”), 17 C.F.R. § 201.1101. This Plan provides for the distribution of a Fair Fund (the “KM Advisory Services Fair Fund” or “Fair Fund”) comprising disgorgement, prejudgment interest, and civil money penalties paid by Kathryn Jane Meredith, d/b/a KM Advisory Services (“Meredith”) and John Paul Harnish, d/b/a KM Advisory Services (“Harnish”) (collectively, the “Respondents”) in the above-referenced matters.¹

2. As described more specifically below, the Plan seeks to compensate investors who were harmed, by the Respondents’ conduct described in the Orders, in connection with breaches of their fiduciary duties, including their respective failures to disclose their conflicts of interest. Based on information obtained by the Commission staff during its investigation and the

¹ See Corrected Order(s) Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Exchange Act Rel. Nos. 95046 and 95047 (collectively, the “Orders”).

review and analysis of applicable records, the Commission staff has reasonably concluded that it has all records necessary to calculate each investor's harm. As a result, the Fair Fund is not being distributed according to a claims-made process, so procedures for making and approving claims in accordance with Rule 1101(b)(4) of the Commission's Rules, 17 C.F.R. § 201.1101(b)(4), are not applicable.

3. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), investors will be compensated for excess fees related to mutual fund 12b-1 fees and/or sales load commissions they paid in accounts managed by KM Advisory Services from January 1, 2016 through December 31, 2020 (the "Relevant Period").

4. In the view of the Commission staff, this methodology constitutes a fair and reasonable allocation of the Fair Fund.

5. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over its implementation.

II. BACKGROUND

6. On June 6, 2022, the Commission instituted and simultaneously settled, separate but related, administrative and cease-and-desist proceedings against the Respondents.²

7. In the Orders, the Commission found that former registered investment adviser KM Advisory Services ("KMA")--an unincorporated sole-proprietorship owned by Meredith from 1994 through February 2020, and purchased by Harnish in February 2020--breached its fiduciary duties in connection with receipt of mutual fund fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 ("12b-1 fees") and commissions in the form of sales "loads" from advisory client investments without fully and fairly disclosing its related conflicts of interest.

8. Since at least January 2016, and continuing through December 2020, KMA invested the vast majority of its clients' assets in certain mutual funds that paid 12b-1 fees and charged sales load commissions exclusively through an introducing broker-dealer (the "Introducing Broker-Dealer"), with whom Meredith and later Harnish was a registered representative. As a result, KMA's clients paid 12b-1 fees and commissions to the Introducing Broker-Dealer, a portion of which were shared with KMA (Meredith and Harnish). KMA failed to disclose fully and adequately this arrangement and the attendant conflicts of interest. KMA also breached its duty of care by not routinely comparing the Introducing Broker-Dealer's order execution with other broker-dealers, which KMA's advisory relationship with its clients required. KMA therefore caused its advisory clients to invest through the Introducing Broker-Dealer and in share classes of mutual funds that charged 12b-1 fees when other broker-dealers made available share classes of the same funds to their customers that may have presented a more favorable value for KMA's clients under the particular circumstances in place at the time of the transactions. KMA also failed to adopt and implement written compliance policies and

² *Id.*

procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its mutual fund share class and broker-dealer selection practices. As a result of the conduct described above, KMA willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

9. Among other remedies, the Commission ordered Meredith to pay \$574,743.53 in disgorgement, \$77,252.39 in prejudgment interest, and a \$100,000.00 civil money penalty, and Harnish to pay \$220,097.30 in disgorgement, \$5,549.69 in prejudgment interest, and a \$75,000 civil money penalty, to the Commission. In each of the Orders, the Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 and further ordered the Fair Funds to be combined to form the KM Advisory Fair Fund, so the penalties paid, along with the disgorgement and interest paid, can be distributed to harmed investors.

10. The Fair Fund consists of the \$1,052,641.99 paid by the Respondents, and has been deposited in a Commission-designated account at the United States Department of the Treasury. Any accrued interest will be added to the Fair Fund.

III. DEFINITIONS

As used in this Plan, the following definitions will apply:

11. **“Administrative Costs”** shall mean any administrative costs and expenses, including without limitation tax obligations, the fees and expenses of the Tax Administrator and Fund Administrator, bond premium expenses, and investment and banking costs.

12. **“Distribution Payment”** means a payment from the Fair Fund to a Payee in accordance with the terms of this Plan.

13. **“Eligible Claimant”** means a Preliminary Claimant, who is determined to have suffered a Recognized Loss, pursuant to the Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant.

14. **“Excluded Party”** shall mean: (a) the Respondents, and Respondents’ advisers, agents, nominees, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities; (b) the Fund Administrator, its employees, and those Persons assisting the Fund Administrator in its role as the Fund Administrator; and (c) any purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

15. **“Fair Fund”** means the fund created by the Commission pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Respondents’ violations described in the Orders.

16. **“Final Determination Notice”** means the written notice sent by the Fund Administrator to (a) any Preliminary Claimant who timely submitted a written dispute of his, her,

or its calculated Recognized Loss notifying the Preliminary Claimant of its resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice as described in paragraph 43, notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant. The Final Determination Notice will constitute the Fund Administrator's final ruling regarding the status of the claim.

17. **“Net Available Fair Fund”** means the Fair Fund, plus any interest or earnings, less Administrative Costs.

18. **“Payee”** means an Eligible Claimant whose distribution amount is equal to or greater than \$10.00, as calculated in accordance with the Plan of Allocation, who will receive a Distribution Payment.

19. **“Person”** means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

20. **“Plan Notice”** means a written notice from the Fund Administrator to each Preliminary Claimant regarding the Commission's approval of the Plan, including, as appropriate: a statement characterizing the distribution; a link to the approved Plan posted on the Commission's website and instructions for requesting a copy of the Plan; specification of any information needed from the Preliminary Claimant to prevent him, her, or it from being deemed an Unresponsive Preliminary Claimant; his, her, or its preliminary Recognized Loss; a description of the tax information reporting and other related tax matters; the procedure for the distribution as set forth in the Plan; and the name and contact information for the Fund Administrator as a resource for additional information or to contact with questions regarding the distribution.

21. **“Plan of Allocation”** means the methodology used by the Fund Administrator to calculate if a Preliminary Claimant has suffered a Recognized Loss. The Plan of Allocation is attached as Exhibit A.

22. **“Preliminary Claimant”** means a Person, or their lawful successors, identified by the Commission based on its review and analysis of applicable records obtained by the Commission staff during its investigation, who may have suffered a loss from paying excess 12b-1 fees and/or sales load commissions in accounts managed by KM Advisory Services during the Relevant Period.

23. **“Recognized Loss”** means the amount of loss calculated in accordance with the Plan of Allocation.

24. **“Relevant Period”** is from January 1, 2016 through December 31, 2020.

25. **“Unresponsive Preliminary Claimant”** means a Preliminary Claimant whose address the Fund Administrator has not been able to verify and/or who does not timely respond to the Fund Administrator's attempts to obtain information, including any information sought in the Plan Notice. No further mailings will be sent to those deemed an Unresponsive Preliminary

Claimant under this provision. Unresponsive Preliminary Claimants will not be eligible for a distribution under the Plan.

IV. TAX COMPLIANCE

26. On June 5, 2023, the Commission appointed Miller Kaplan Arase LLP as the tax administrator (the “Tax Administrator”) for the Fair Fund to handle the tax obligations of the Fair Fund.³ The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with its 2022-2024 Engagement Letter Agreement with the Commission.⁴

27. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) Obtaining a taxpayer identification number;
- (b) Requesting funds necessary for the timely payment of all applicable taxes, the payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) Fulfilling any information reporting or withholding requirements imposed on distributions from the Fair Fund.

28. All tax obligations will be paid from the Fair Fund, subject to the review and approval of Commission staff.

V. FUND ADMINISTRATOR

29. On July 31, 2023, the Commission appointed KCC, LLC as the fund administrator (the “Fund Administrator”) for the Fair Fund, and the Fund Administrator has obtained a bond in the amount of \$1,052,641.99, as ordered.⁵ Pursuant to Rule 1105(a) of the Commission’s Rules, 17 C.F.R. § 201.1105(a), the Fund Administrator may be removed at any time by order of the Commission or hearing officer.

30. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to obtain accurate mailing information for Preliminary Claimants; establishing a website and

³ See Order Appointing Tax Administrator, Exchange Act Rel. No. 97646 (June 5, 2023).

⁴ See Omnibus Order Directing the Engagement of Two Tax Administrators for Appointment on a Case-By-Case Basis in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 94845 (May 4, 2022).

⁵ See Order Appointing Fund Administrator, Setting Bond Amount, and Authorizing Payment of the Administrator’s Fees and Expenses from the Fair Fund, Exchange Act Rel. No. 98024 (July 31, 2023).

staffing a call center to address inquiries regarding the Plan; disseminating the Plan Notice; preparing accountings; cooperating with the Tax Administrator appointed by the Commission to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (FATCA); disbursing the Fair Fund in accordance with this Plan, as ordered by the Commission; and researching and reconciling errors and reissuing payments, when possible.

31. To carry out the purposes of this Plan, the Fund Administrator is authorized to make and implement immaterial changes to the Plan upon agreement of the Commission staff. If a change is deemed to be material by the Commission staff, Commission approval is required prior to implementation by amending the Plan.

32. The Fund Administrator may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the Commission staff.

33. When administering this Plan, the Fund Administrator, and/or each of its designees, agents and assigns, may rely on: all applicable law; orders issued by the Commission, including orders issued by delegated authority; orders issued by an administrative law judge, if any, appointed in this proceeding; and any records, including records containing investor information, provided by Commission staff.

34. The Fund Administrator is authorized to enter into agreements with third parties as may be appropriate or necessary in the administration of the Fair Fund, provided such third parties are not excluded pursuant to other provisions of this Plan. In connection with such agreements, the third parties shall be deemed to be agents of the Fund Administrator under this Plan.

35. The Fund Administrator will be entitled to payment from the Fair Fund of reasonable fees and expenses, including the bond premium, incurred in the performance of its duties (including any such fees and expenses incurred by agents, consultants or third parties retained by the Fund Administrator in furtherance of its duties).

VI. PLAN PROCEDURES

Specification of Preliminary Claimants

36. Using information obtained during its investigation, the Commission has identified the Preliminary Claimants. Preliminary Claimants are limited to only those Persons who may have suffered a loss as a result of Respondents' breaches of their fiduciary duties, as described in the Orders, who may have suffered a loss from paying excess 12b-1 fees and/or sales load commissions in accounts managed by KM Advisory Services during the Relevant Period.

Procedures for Locating and Notifying Preliminary Claimants

37. Within 45 days of Commission approval of the Plan, the Fund Administrator will:
- (a) Establish and maintain a website devoted solely to the Fair Fund. The Fair Fund's website will make available a copy of the approved Plan, include a copy of the Plan Notice, and related materials in downloadable form, and such other information that the Fund Administrator believes will be beneficial to Preliminary Claimants;
 - (b) Establish and maintain a toll-free telephone number for Preliminary Claimants to call and speak to a live representative of the Fund Administrator during its regular business hours or, outside of such hours, to hear pre-recorded information about the Fair Fund;
 - (c) Establish and maintain a traditional mailing address and an email address which will be listed on all correspondence from the Fund Administrator to Preliminary Claimants as well as on the Fair Fund's website;
 - (d) Establish and maintain a case specific database of all Preliminary Claimants based upon information provided to and obtained by the Fund Administrator, including their last known physical and email addresses;
 - (e) Run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring the mailing information for Preliminary Claimants is up-to-date; and
 - (f) Send a Plan Notice to each Preliminary Claimant's last known email address (if known) and/or mailing address.

38. The Commission staff retains the right to review and approve any material posted on the Fair Fund's website, any communication with investors, and any scripts used in connection with communications with investors.

Undeliverable Mail

39. If any mailing is returned as undeliverable, the Fund Administrator will make the best practicable efforts to ascertain a Preliminary Claimant's correct address. If another address is obtained, the Fund Administrator will then resend it to the Preliminary Claimant's new address within 30 days of receipt of the returned mail. If the mailing is returned again, and the Fund Administrator, despite best practicable efforts, is unable to find a Preliminary Claimant's correct address, the Fund Administrator, in its discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant. No further mailings will be sent to those deemed an Unresponsive Preliminary Claimant under this provision.

40. The Fund Administrator, with Commission staff approval, may engage a third-party search firm to conduct more rigorous searches for Persons whose mailings are returned as undeliverable.

41. Any Preliminary Claimant who relocates or otherwise changes contact information after receipt of the Plan Notice must promptly communicate any change in address or contact information to the Fund Administrator.

Procedures to Request Plan Notice

42. Any Person who does not receive a Plan Notice, as described in paragraph 37(f) but who is aware of this Plan (e.g., through other Preliminary Claimants or on www.sec.gov) and believes they should be included as a Preliminary Claimant should contact the Fund Administrator within 60 days from the approval of the Plan to establish that they should be considered a Preliminary Claimant. Such Person should include with that communication, documentation sufficient to support their claim that they should be considered a Preliminary Claimant, as well as contact information (physical address, telephone number, and email address, if available) for responsive communications. The Fund Administrator will send the Person a Plan Notice within 14 days of receiving the Person's documentation, if the Fund Administrator determines that the Person should have received a Plan Notice.

Failure to Respond to Plan Notice

43. If a Preliminary Claimant is requested to respond and fails to respond within 30 days from the initial mailing of their Plan Notice, the Fund Administrator will make no fewer than 2 attempts to contact the Preliminary Claimant by telephone, email, or mail. The second attempt will in no event take place more than 100 days from the Commission's approval of the Plan. If a Preliminary Claimant fails to respond to the Fund Administrator's contact attempts as described in this paragraph, the Fund Administrator, in its discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

Dispute Process

44. Disputes will be limited to the calculation of Recognized Loss. Within 120 days of the Commission's approval of the Plan, the Fund Administrator must receive a written communication detailing any dispute along with any supporting documentation. The Fund Administrator will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation.

Final Determination Notices

45. Within 150 days of the Commission's approval of the Plan, the Fund Administrator will send a Final Determination Notice to (a) any Preliminary Claimant who timely submitted a written dispute as described in paragraph 44 above, notifying the Preliminary Claimant of its resolution of the dispute; and (b) those Preliminary Claimants who have not

responded to the Plan Notice, as described in paragraph 43 above notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant.

Distribution Methodology

46. The Fund Administrator will calculate each Preliminary Claimant's Recognized Loss in accordance with the Plan of Allocation. All Preliminary Claimants who are determined to have a Recognized Loss, and who are not deemed an Excluded Party, or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant.

47. No Distribution Payments will be made for less than \$10.00. If an Eligible Claimant's Recognized Loss, in accordance with the Plan of Allocation, calculates to a distribution amount less than \$10.00, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to \$10.00.

Establishment of a Reserve

48. Before determining the amount of funds available for distribution and calculating each Payee's Distribution Payment, the Fund Administrator, in conjunction with the Tax Administrator, will establish a reserve to pay Administrative Costs and to accommodate any unexpected expenditures (the "Reserve").

49. After all Distribution Payments are made and Administrative Costs paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 72 below.

Preparation of the Payment File

50. Within 180 days of Commission approval of the Plan, the Fund Administrator will compile and send to the Commission staff the Payee information, including the name, address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the "Payee List"). The Fund Administrator will also provide a Reasonable Assurances Letter to the Commission staff, representing that the Payee List: (a) was compiled in accordance with the approved Plan; (b) is accurate as to Payees' names, addresses, Recognized Losses and amounts of their Distribution Payment; (c) includes the number of Payees compensated; (d) the percentage of the Payee's Recognized Loss being compensated by the disbursement from the Fair Fund, and if applicable, the total percentage to include all prior disbursements; (e) the total amount of funds to be disbursed; and (f) provides all information necessary to make a payment to each Payee.

The Escrow Account

51. Prior to the disbursement of funds from the Net Available Fair Fund, the Fund Administrator will establish an escrow account (the "Escrow Account") at a United States commercial bank that is a well-capitalized financial institution as defined by the Federal Reserve

Act, Subpart D, 12 C.F.R. 208.43 and that is not unacceptable to the Commission staff (the “Bank”), pursuant to an escrow agreement (the “Escrow Agreement”) provided by the Commission staff.

52. The Fund Administrator, pursuant to the Escrow Agreement, shall also establish with the Bank a separate deposit account (e.g., controlled distribution account, managed distribution account, linked checking and investment account) (the “Distribution Account”), insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC pass through limit. The Distribution Account shall be linked with the Escrow Account and shall be named, and records maintained, in accordance with the Escrow Agreement.

53. During the term of the Escrow Agreement, the portions of the Fair Fund transferred to the Escrow Account (the “Escrow Property”) shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government or an agency thereof. The investment shall be, of a type and term necessary to meet the cash liquidity requirements for payments to Payees and Administrative Costs, including investment or reinvestment in a bank account insured by the FDIC up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States Government.

54. The Fund Administrator shall provide duplicate original bank and/or investment statements on any accounts established by the Fund Administrator to the Tax Administrator monthly and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

55. The Fund Administrator, in consultation with the Commission staff, shall work with the Bank on an ongoing basis to deposit or invest funds in the Escrow and Distribution Accounts so as to result in the maximum reasonable net return, taking into account the safety of such deposits or investments and tax implications; and to determine an allocation of funds between the Escrow and Distribution Account.

56. All interest, dividends, and/or income earned by the Escrow Property will accrue for the benefit of the Escrow Property. All Administrative Costs associated with the Escrow and Distribution Accounts will be the responsibility of the Fund Administrator, who may be reimbursed for said costs as provided in this Plan. No such Administrative Costs may be paid to the Bank, its agents, and/or its affiliates from the Escrow Property.

Distribution of the Fair Fund

57. Upon the Commission’s staff’s receipt, review, and acceptance of the Payee List and Reasonable Assurances Letter from the Fund Administrator, the Commission staff will obtain an order from the Commission pursuant to Rule 1101(b)(6) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(6), to disburse funds from the Net Available Fair Fund to the Bank in accordance with the Payee List for distribution by the Fund Administrator in accordance with the Plan. All disbursements will be made pursuant to a Commission Order.

58. Upon issuance of an order to disburse, the Commission staff will direct the transfer of funds in accordance with the Payee List to the Bank. The Fund Administrator will then use its best efforts to commence mailing Distribution Payment checks and/or effect electronic payments within 10 business days of the release of the funds into the Escrow Account. All efforts will be coordinated to limit the time between the Escrow Account's receipt of the funds and the issuance of Distribution Payments.

59. All checks will be issued by the Fund Administrator from the Distribution Account. All checks will bear a stale date of 90 days from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the Bank will be instructed to stop payment on those checks. A Payee's claim will be extinguished if he, she, or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Fair Fund, except if a check reissue has been requested before the stale date, such request is governed by paragraph 63.

60. All Distribution Payments will be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each Payee and that the Payee should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void and cannot be reissued after 90 days from the date the original check was issued; and (d) contact information for the Fund Administrator for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be prepared by the Tax Administrator and submitted to the Commission staff for review and approval.

61. All Distribution Payments, either on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from the Fair Fund established by the Commission to compensate investors for harm as a result of securities law violations.

Post Distribution; Handing of Returned or Uncashed Checks; and Reissues

62. The Fund Administrator shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Fund Administrator as "undeliverable." If new address information becomes available, the Fund Administrator will repackage the distribution check and send it to the new address. If new address information is not available after a diligent search (and in no event no later than 60 days after the initial mailing of the original check) or if the distribution check is returned again, the check shall be voided and the Fund Administrator shall instruct the issuing financial institution to stop payment on such check. If the Fund Administrator is unable to find a Payee's correct address, the Fund Administrator, in its discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

63. The Fund Administrator will reissue checks or electronic payments to Payees upon the receipt of a valid, written request from the Payee if prior to the initial stale date. In cases where a Payee is unable to endorse a Distribution Payment check as written (e.g., name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful

representative requests the reissuance of a Distribution Payment check in a different name, the Fund Administrator will request, and must receive, documentation to support the requested change. The Fund Administrator will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Fund Administrator, such change request is properly documented, the Fund Administrator will issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void 90 days from the reissuance.

64. The Fund Administrator will work with the Bank and maintain information about uncashed checks and any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Fund Administrator is responsible for researching and reconciling errors and reissuing payments when possible. The Fund Administrator is also responsible for accounting for all payments. The amount of all uncashed and undelivered payments will continue to be held in the Fair Fund.

65. The Fund Administrator will make and document its best efforts to contact Payees to follow-up on the status of uncashed distribution checks over \$100 (other than those returned as “undeliverable”) and take appropriate action to follow-up on the status of uncashed checks at the request of Commission staff. The Fund Administrator may reissue such checks, subject to the time limits detailed herein.

66. At the discretion of the Fund Administrator, certain costs that were not factored into the Reserve, such as bank fees for the return of a payment, may reduce the Payee’s Distribution Payment. In such situations, the Fund Administrator will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

Receipt of Additional Funds

67. Should any additional funds be received pursuant to Commission or Court order, agreement, or otherwise, prior to the Commission’s termination of the Fair Fund, such funds will be added to the Fair Fund and distributed, if feasible, in accordance with the Plan, pursuant to the Commission’s Rules.

Administrative Costs

68. All Administrative Costs will be paid from the Fair Fund in accordance with the Commission’s Rules.

Disposition of Undistributed Funds

69. If funds remain following the initial distribution, the Fund Administrator, in consultation with the Commission staff, may seek subsequent distribution(s) of any remaining funds, pursuant to the Commission’s Rules. All subsequent distributions shall be made in a manner that is consistent with this Plan.

70. A residual will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund and the payment of all Administrative Costs (the “Residual”). The Residual may include funds from, among other things, amounts remaining in the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or were returned to the Commission, and tax refunds received due to the Fair Fund’s overpayment of taxes or for waiver of IRS penalties.

71. Once the Fund Administrator, in consultation with the Commission staff, deems further distribution of the Fair Fund to investors infeasible, the Fund Administrator will direct any uncashed Distribution Payments to be voided, and return any funds remaining in the Escrow and Distribution Accounts to the Commission to become part of the Residual.

72. All funds remaining in the Residual that are infeasible to distribute to investors will be transferred to the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 (the “Exchange Act”), after the final accounting is approved by the Commission. Returning such money to the Respondents would be inconsistent with the equitable principle that no Person should profit from his wrongdoing. Therefore, in these circumstances distributing disgorged funds to the U.S. Treasury is the most equitable alternative.

Accountings

73. In accordance with Rule 1105(f) of the Commission’s Rules, during the first ten 10 days of each calendar quarter after funds have been transferred from the U.S. Treasury to the Bank, the Fund Administrator will file with the Commission, on a standardized accounting form provided by the Commission staff, an accounting of all monies earned or received and all monies spent in connection with the administration of the Plan.

74. Upon completion of all distributions to Payees, the Fund Administrator shall arrange for the payment of any remaining Administrative Costs, pursuant to the procedures described above, and submit a final accounting for approval by the Commission on a standardized form provided by the Commission staff. The Fund Administrator will also submit a report to the Commission staff containing the final distribution statistics regarding distributions to individuals and entities, and such other information requested by the Commission staff.

Wind-down and Document Retention

75. The Fund Administrator will shut down the website, P.O. Box and customer service telephone line(s) established specifically for the administration of the Fair Fund six (6) months after the transfer of any remaining funds to the Commission, or at such earlier time as the Fund Administrator determines with the concurrence of the Commission staff.

76. The Fund Administrator will retain all materials submitted by Preliminary Claimants in either paper or electronic form for a period of six (6) years from the date of approval of a final fund accounting. Materials maintained in electronic form must be accessible and readable for the duration of retention. Pursuant to the Commission staff’s direction, the Fund

Administrator will either turn over to the Commission or destroy all materials, including documents in any media, upon expiration of this period.

Termination of the Fair Fund

77. The Fair Fund will be eligible for termination and the Fund Administrator will be eligible for discharge after all of the following have occurred (a) a final accounting, in a standard accounting format provided by the Commission staff, has been submitted by the Fund Administrator and approved by the Commission; (b) all Administrative Costs have been paid; and (c) any amount remaining in the Fair Fund has been returned to the Commission for transfer to U.S. Treasury. Once the Commission has approved the final accounting, the Commission staff will seek an order from the Commission authorizing: (a) the transfer of the Residual that is infeasible to return to investors, and any amounts returned to the Fair Fund in the future that is infeasible to return to investors, to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act; (b) discharge of the Fund Administrator; (c) cancellation of the Fund Administrator's bond; and (c) termination of the Fair Fund.

VII. NOTICE OF PROPOSED PLAN AND OPPORTUNITY FOR COMMENT

78. The Notice of the Proposed Plan of Distribution and Opportunity for Comment (the "Notice") shall be published on the Commission's website <http://www.sec.gov/litigation/fairfundlist.htm>. Any Person wishing to comment on the Plan must do so in writing by submitting their comments within 30 days of the date of the Notice (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090; (b) by using the Commission's Internet comment form (www.sec.gov/litigation/admin.shtml); or (c) by sending an e-mail to rule-comments@sec.gov. Comments submitted by e-mail or via the Commission's website should include "Administrative Proceeding File Nos. 3-20881 and 3-20882 in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.

Exhibit A

PLAN OF ALLOCATION

This Plan of Allocation is designed to compensate investors for excess fees related to mutual fund 12b-1 fees and/or sales load commissions paid in accounts managed by KM Advisory Services from January 1, 2016 through December 31, 2020 (the “Relevant Period”). Investors who did not suffer a loss due to paying excess 12b-1 fees and/or sales load commissions during the Relevant Period due to the Respondents’ misconduct are ineligible to recover under this Plan. Based upon records obtained during its investigation, the Commission has identified those investors, or their lawful successors, who may have suffered a loss from excess 12b-1 fees and/or sales load commissions during the Relevant Period (the “Preliminary Claimants”).

The Fund Administrator will calculate the amount of loss (“Recognized Loss”) based on the actual 12b-1 fees paid and actual sales load commissions paid as follows:

1. Sum the 12b-1 fees paid in each month across all months of the Relevant Period (“Recognized Loss on Fees”);
2. Sum the sales load commissions paid in each month across all months of the Relevant Period (“Recognized Loss on Sales Load Commissions”); and
3. Recognized Loss will be the sum of Recognized Loss on Fees and Recognized Loss on Sales Load Commissions. If the Recognized Loss calculates to a negative number, reflecting a gain, then the Recognized Loss will be \$0.00.

Any Preliminary Claimant who suffered a Recognized Loss pursuant to this Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant, as defined in the Plan, will be deemed an Eligible Claimant.

Additional Provisions

Allocation of Funds: As the Net Available Fair Fund is less than the sum of the Recognized Losses of all Eligible Claimants, each Eligible Claimant’s distribution amount will equal his, her or its “*Pro Rata Percent*” of the Net Available Fair Fund, subject to the “Minimum Distribution Amount.”

Pro Rata Percent: A *Pro Rata Percent* computation is intended to measure Eligible Claimants’ Recognized Losses against one another. The Fund Administrator shall determine each Eligible Claimant’s *Pro Rata Percent* as the ratio of his, her, or its Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00. If an Eligible Claimant’s distribution amount is less than the Minimum Distribution Amount, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and his, her, or its

distribution amount will be reallocated on a *pro-rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

Payee: An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee.

Distribution Payment: Payees will receive a Distribution Payment equal to his, her, or its distribution amount.